

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

United States of America	)	
	)	
vs.	)	Cr. No. 3:00-626
	)	C.A. No. 3:06-156-HMH
	)	
Brian Peter Zater,	)	
	)	
Movant.	)	<b>OPINION &amp; ORDER</b>

This matter is before the court on Brian Peter Zater’s (“Zater”) request for a certificate of appealability. Zater filed a 28 U.S.C. § 2255 motion on January 11, 2006. On January 20, 2006, the court dismissed Zater’s § 2255 motion. For the reasons stated below, the court denies Zater’s request for a certificate of appealability.

An appeal may not be taken from a final order in a § 2255 proceeding unless a circuit justice or a circuit or district judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1)(B) (West Supp. 2005); Fed. R. App. P. 22(b). The movant must make a “substantial showing of the denial of a constitutional right” for the court to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2); Murphy v. Netherland, 116 F.3d 97, 99 (4th Cir. 1997). To obtain a certificate of appealability under § 2253(c), a § 2255 movant “must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotation marks omitted). If the court denies a motion for a certificate of appealability, the court must state its reasons for not issuing it. See Fed. R. App. P. 22(b)(1).

Zater's claims are not debatable and could not be resolved in a different manner. Further, the issues presented are inadequate, and Zater does not deserve encouragement to proceed further. Accordingly, the court declines to issue a certificate of appealability.

Therefore, it is

**ORDERED** that Zater's request for a certificate of appealability is denied.

**IT IS SO ORDERED.**

s/ Henry M. Herlong, Jr.  
United States District Judge

Greenville, South Carolina  
February 7, 2006

#### **NOTICE OF RIGHT TO APPEAL**

The movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.